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COURT OF CRIMINAL APPEALS  
11/5/2019  
DEANA WILLIAMSON, CLERK

**HARRIS COUNTY DISTRICT ATTORNEY**

November 4, 2019

Deana Williamson, Clerk  
Court of Criminal Appeals of Texas  
201 West 14<sup>th</sup> Street, Room 106  
Austin TX 78701

**RE: Supplemental Authority for *Nathan Foreman v. State of Texas***

Case Numbers: PD-0190-18 and PD-01091-18

Dear Ms. Williamson:

This case is scheduled for oral argument on November 6, 2019. I am writing to provide the Court with a supplemental authority that I would like to bring to the Court's attention prior to argument.

Professor Dix has updated his treatise to address the lower court's opinion. He concludes that the lower court's use of the "beyond dispute" standard for probable cause "is difficult to support and may well be wrong":

A split en banc [Fourteenth] Court of Appeals in *Foreman v. State* considered whether a magistrate could infer from common knowledge that commercial premises identified as an "auto shop" would have "audio/video surveillance video and/or video equipment," where the affidavit contained no allegation of specific facts supporting the conclusion that a particular shop had surveillance equipment. The *Foreman* majority held the warrant provision authorizing a search for and seizure of such items insufficiently supported and thus invalid: "The presence of surveillance video or equipment in an auto shop is not so well known to the community as to be beyond dispute."

*Foreman* misstated the matter. Common knowledge need not be that it is “beyond dispute” that auto shops have surveillance equipment. It would be sufficient if common knowledge regarding the frequency with which auto shops have such equipment is such as to permit an inference that there is a fair probability that a specific auto shop has this sort of equipment. If the issue is so put, the en banc majority's position is difficult to support and may well be wrong.

George E. Dix & John M. Schmolesky, 40 Tex. Prac., Criminal Practice and Procedure § 9:39 (3d ed.) (Westlaw 2019).

I have provided a copy of this letter to the appellant's counsel, Stanley G. Schneider.

Sincerely

/s/C.A. Morgan  
Clint Morgan  
Assistant District Attorney  
Harris County, Texas